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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Thomas S. Hixson,  
United States Magistrate Judge

SOCIETE DU FIGARO, )  
                          )  
Plaintiff,            )  
                          )  
vs.                    )      **Case No. 22-CV-04437-YGR**  
                          )  
                          )  
APPLE, INC.,            )  
                          )  
Defendant.            )  
                          )  
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San Francisco, California  
Friday, January 13, 2023

**TRANSCRIPT OF REMOTE ZOOM VIDEOCONFERENCE PROCEEDINGS**

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1 **Friday - January 13, 2023**

2 **3:08 P.M.**

3 **P R O C E E D I N G S**

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5 **THE CLERK:** All right. Good afternoon, everyone. We're  
6 here in Civil Action 22-4437, Societe du Figaro versus Apple,  
7 Inc. The Honorable Thomas S. Hixson presiding.

8 Counsel, please state your appearances for the record.  
9 Let's start with plaintiff's counsel.

10 **MR. LOPEZ:** Good afternoon, Your Honor. Rob Lopez of Hagens  
11 Berman for the plaintiffs.

12 **THE COURT:** Good afternoon.

13 **MR. LAZARUS:** Good afternoon, Your Honor. Eli Lazarus of  
14 Gibson Dunn for Apple, Inc.

15 **THE COURT:** Good afternoon.

16 So I've got the parties' dispute, the proposed protective  
17 order. Let me ask Apple with respect to the data security  
18 provisions, there are -- there have been, as you know, protective  
19 orders in the related cases.

20 Have there been instances of security breaches or suspected  
21 breaches that your proposals are response to or is this more of a  
22 preventative nature?

23 **MR. LAZARUS:** Thank you, Your Honor.

24 Our proposal is in response to the overarching threat of  
data security breaches and, as we said in our papers, that threat

1 has grown significantly in the three years since the protective  
2 orders were entered in the related cases.

3 At the same time, some particular facts have come to Apple's  
4 attention that have informed our position, and I'm not at liberty  
5 to say more about those in an open setting, but would be happy to  
6 discuss in a closed session if it would be helpful to Your Honor.

7 **THE COURT:** Let me think about that.

8 But it sounds like the larger impetus is more general  
9 concerns about hacking. Is that right?

10 **MR. LAZARUS:** That is correct, Your Honor, that we are  
11 concerned about the, as I say, the overarching danger of hacking  
12 which is an immediate and serious concern and it has grown worse  
13 in recent years.

14 We think that in this case specifically, it would be  
15 appropriate to enter data security provisions in part because we  
16 know that Apple and the plaintiffs have agreed that Apple will  
17 produce what was produced in the related cases, and we know that  
18 there were sensitive documents and data produced there.

19 **THE COURT:** Okay. Are there things that you want to tell me  
20 and arguments you would like to make that you think I should  
21 consider before ruling on this issue but you feel constrained  
22 from mentioning them in a public proceeding because we can move  
23 to a Zoom meeting that would just be us?

24 **MR. LAZARUS:** I think that that would be helpful, Your  
25 Honor, to provide more context.

1 I think that -- I will say that it is Apple's position that  
2 data security provisions like these we think should be entered in  
3 all cases where sensitive information is produced. And we have  
4 begun a process of outreach to the Attorneys Advisory Committee  
5 on the Local Rules to explore how to make that proposal that the  
6 model order include these.

7 But, yes, I think that it would be helpful to discuss in a  
8 closed setting.

9 **THE COURT:** Okay. Then I will do that.

10 But, first, let's address the other things that can be  
11 addressed publicly.

12 One of the things that Apple proposed is that the parties  
13 shall implement encryption of all protected materials in transit.  
14 What does transit mean?

15 **MR. LAZARUS:** Thank you, Your Honor.

16 Transit refers to when the data, for example, when a lawyer  
17 is looking at data from -- that is transmitted from an e-  
18 discovery vendor. When that data is transmitted to the  
19 attorney's office for download, it would be encrypted in that  
20 transfer.

21 **THE COURT:** Can you explain that again and what's going  
22 where? You have the data is at the document vendor. And then  
23 what was the transit to the counsel?

24 **MR. LAZARUS:** Yes, Your Honor.

25 So I guess to back up, data or documents would be produced

1 by a party to another party and then transferred by that  
2 receiving party to its vendor. The vendor may hold the data and  
3 then may transfer some of it back to the counsel for review.

4 That would be -- the data would be encrypted during those  
5 transfers and, again, you know, when transferred from the data  
6 vendor to an expert's office. In all of those transfers, the  
7 data should be encrypted.

8 **THE COURT:** To me the word "transit" implies physical  
9 movement, but now you're using the word "transfer" which for  
10 electronic files to me does not imply physical movement.

11 **MR. LAZARUS:** I think that certainly when in physical  
12 transit if data is downloaded to a, for example, a hard drive and  
13 transferred that way, it would be -- certainly, encryption would  
14 be appropriate there.

15 I don't think that we intended a distinction between  
16 physical and electronic transfer.

17 **THE COURT:** You intended to include both electronic and  
18 physical?

19 **MR. LAZARUS:** Yes, Your Honor.

20 When data is being transferred from one location to another,  
21 we do believe that encryption is appropriate.

22 **THE COURT:** Suppose one Hagens Berman attorney is working at  
23 home, and she says, oh, I am preparing for a deposition, look at  
24 this hot dog. And it's something Apple says you need a  
25 confidential, and she emails it to her colleagues at Hagens

1 Berman also working on this case.

2 Does that attachment have to be encrypted?

3 **MR. LAZARUS:** I believe that it -- it is a good question,  
4 Your Honor. And I think that we would -- the best practice would  
5 be to keep it in a secure location so that it is accessible by  
6 each attorney. And rather than attaching it to an email, it  
7 would be appropriate for all of them to be logged in to a secure  
8 system to view the document.

9 **THE COURT:** Is that transit or is that not transit?

10 **MR. LAZARUS:** I think that it would be transit. The  
11 transfer of a document from one attorney's computer to another, I  
12 believe that would be transit.

13 **THE COURT:** I see.

14 The idea that they would have to encrypt an email attachment  
15 or an email it around within the firm's email system seems crazy  
16 to me. Have you operated that way in other cases?

17 **MR. LAZARUS:** Your Honor, typically, we would keep -- if  
18 there are confidential documents, we would keep them on a secure  
19 system, a secure server and access them that way rather than  
20 emailing them around.

21 That said, I think this is -- you know, this is an issue  
22 that we have not discussed in depth with the plaintiffs, and I  
23 think we could certainly discuss that further and come to --  
24 hopefully come to some mutually agreeable practice.

25 **THE COURT:** The thing I -- I initially thought it was that

1 transit meant something physical. And I thought that was bad  
2 enough because presumably if a Hagens Berman attorney is going to  
3 a deposition or a court hearing, she might have locally saved  
4 documents on her computer and then presumably she would have to  
5 encrypt them all before getting on the plane. But since you  
6 think that (indiscernible) also means every electronic transfer,  
7 I mean wow.

8 And then you've also required multi-factor authentication  
9 for any access to protected materials. Does this mean that when  
10 a Hagens Berman attorney is in the office sitting at her desk and  
11 she logs in, password protection is not sufficient?

12 **MR. LAZARUS:** That's correct, Your Honor, but I would say  
13 that the multi-factor authentication is extremely important to  
14 security.

15 But in the example that you just gave, it would not be the  
16 case that the attorney would need to enter a password and  
17 necessarily enter some other code or something. It may be enough  
18 that since she is in her office on if she's on a recognized  
19 device, that would qualify as multi-factor authentication.

20 Multi-factor authentication can be any -- authentication  
21 with any two or more factors from among something you know like a  
22 password, something you have like a trusted computer, or  
23 something you are like a fingerprint.

24 So there wouldn't necessarily need to be more than a  
25 password if the attorney is logging in on a recognized device.

1           **THE COURT:** I would think that that (indiscernible)  
2 protection would not qualify as multi-factor even on a recognized  
3 device because you don't know who's entering that password. It  
4 could be anybody.

5           **MR. LAZARUS:** That is true, Your Honor.

6           But the multi-factor authentication, again, would be  
7 satisfied with a password and a trusted device. So a hacker  
8 halfway around the world who has discovered the person's password  
9 could not log in to the system because they do not have that  
10 trusted device.

11           **THE COURT:** I see.

12           What if draft motions for summary judgment, quote, Apple's  
13 protected materials, do all the drafts have to be encrypted when  
14 the emails -- attorneys email them to each other?

15           **MR. LAZARUS:** I'm sorry. I couldn't quite hear that.

16           **THE COURT:** Sure. What about a draft motion that quotes  
17 extensively from Apple's protected materials? Do the attorneys  
18 at Hagens Berman have to encrypt their draft Word documents  
19 because they contain protected materials if they're going to  
20 email them to each other?

21           **MR. LAZARUS:** Again, that is not an issue that we have  
22 discussed with plaintiffs. And it may be that -- I would need,  
23 Your Honor, to confer with my client on that. I don't know  
24 whether we would take the position that those files need to be  
25 encrypted for that purpose.

1           **THE COURT:** All righty.

2           Mr. Lopez, you've been very patient. Anything that you  
3 would like to speak to?

4           **MR. LOPEZ:** Yes, Your Honor.

5           So, first of all, this is the first time we've heard of any  
6 specific driver for this proposal from Apple, so -- and I  
7 understand the Court may take a (indiscernible) --

8           **THE COURT:** Sorry, your -- you got very quiet, and I didn't  
9 know if it's your fault or mine. But if you could up the volume,  
10 that would be appreciated.

11           **MR. LOPEZ:** Yes. Can you hear me now?

12           **THE COURT:** I can. Thank you.

13           **MR. LOPEZ:** Great, Your Honor. Sorry about that.

14           So this is the first that we've heard of any specific driver  
15 for this data security provision from Apple. So I just wanted to  
16 let the Court know that on the record before we do go into closed  
17 session. It's something we haven't heard of and something we  
18 haven't had a chance to assess whatever it is that Mr. Lazarus is  
19 going to say.

20           And I think it's no small matter and no just matter of a  
21 rule being a rule that Apple hasn't met its burden here. It's  
22 cited to no cases justifying these very sweeping what I'd call  
23 broke new dat security provisions with no definitions of key  
24 terms, terms that could actually render systems more insecure  
25 insofar as they call for the provision upon request of data

1       vulnerabilities, of security plans, and that sort of thing.

2           What I will say is this protective order that's in place now  
3       is of course a function of the Court's model order. It was  
4       modified by agreement after much discussion. It's perfectly  
5       suitable here. It served the parties very well.

6           And I think to the extent that Apple wants to vary this to  
7       the extent it does, Mr. Lazarus has already indicated that his  
8       client is working on some outreach to some attorney committee to  
9       do that. And I think that's probably the appropriate thing if  
10      they want to make this into some new program because you really  
11      ought to have various stakeholders weighing in on this, the  
12      plaintiff's bar, the defense bar, experts on ESI.

13           I mean we've already seen with the Court's good questions  
14      some confusion about what these terms may mean and how far they  
15      should reach. And to do this on two and a half pages with no  
16      authority is really just uncalled for.

17           I will say one more thing, Your Honor, as well. This  
18      material that has already been produced in the Cameron action is  
19      something that Apple has agreed it will comport at the case  
20      management conference to allow us access to in this case. And we  
21      have agreed to use the same vendor that consumers are using now  
22      under the consumer protective order that was also in place in the  
23      Cameron matter. So that material has already been produced.

24           As far as data goes, yes, Apple produced a good volume of  
25      that to us, and Cameron has agreed to produce it to us again.

1       But as Mr. Lazarus will recall, we had a good working  
2       relationship with them as we do now. And they expressed security  
3       concerns, and we addressed them to Apple's satisfaction. And we  
4       would certainly do that again here.

5       **THE COURT:** Thank you.

6           Mr. Lazarus, the things that you want to tell me in a sealed  
7       hearing, have you discussed those with Mr. Lopez so far?

8       **MR. LAZARUS:** We have not.

9       **THE COURT:** Okay. In general, I want parties to meet and  
10      confer with each other before they present things to me. And in  
11      response to a few of my questions, it doesn't seem to me that  
12      Apple has really thought through what its data security  
13      provisions would require, in particular, if transit means  
14      electronic communications.

15           And then we have to worry about what about Word documents  
16      that are stored in a document management system on plaintiff's  
17      counsel's system and then different people access the Word  
18      documents. Encryption doesn't seem feasible, and it sounds like  
19      Apple isn't quite sure if it were to actually want or insist on  
20      that.

21           So here's my thought, and I'll ask (indiscernible) what you  
22      think. I'm ready to rule on the use restriction. I'm ready to  
23      rule on the disclosure requirement regarding data breaches. I'm  
24      ready to rule on the non-waiver as to manually (indiscernible)  
25      material. And I'm ready to rule on the destruction of materials.

1           My thought is that for the data security provisions, I'll  
2 say I don't think the parties have met and conferred  
3 sufficiently, and I don't think that Apple has thought through in  
4 sufficient detail exactly what it would demand of the parties and  
5 then tell the parties to go meet and confer about that further.

6           What are Apple's thoughts on my proceeding in that manner?

7           **MR. LAZARUS:** Thank you, Your Honor.

8           That sounds very good to us. We do think that, you know,  
9 the standard laid down in Rule 26 is good cause, and we do think  
10 that there is good cause for data security provisions here.

11           But, you know, if the plaintiffs do think that there's  
12 something unclear, we do think that we should meet and confer  
13 about that rather than have the plaintiffs refuse the entire  
14 collection of data security provisions.

15           And in response to Mr. Lopez's comment that it may be  
16 appropriate to amend the model order, we certainly think that  
17 that should happen. But, at the same time, that should not be  
18 mutually exclusive with entering an appropriate order in this  
19 case.

20           So I'll stop there, but we certainly appreciate Your Honor's  
21 proposal that we meet and confer further.

22           **THE COURT:** And, Mr. Lopez, what do you think about my  
23 proposal?

24           **MR. LOPEZ:** Well, I think in the first instance, again,  
25 Apple hasn't met its burden. The case law is there, and Apple

1 hasn't even addressed it in its briefing, hasn't cited any  
2 considered law, any considered decisions for why these new really  
3 onerous and kind of broke provisions ought to come into play  
4 here.

5 And, again, I think that's no small matter because without  
6 citations to authority, we haven't been able to respond. And I  
7 think these are very far and wide-reaching proposal that it's  
8 making that again paradoxically could lead to less security all  
9 the way around if we need to be disclosing the details of various  
10 undertakings we've taken even within our own office which is the  
11 way this is written in great detail in some written form to our  
12 opposition.

13 I mean the more you proliferate that sort of information,  
14 the more vulnerable you make yourself when people actually know  
15 what very specific provisions you've taken for data security.

16 So I think it's --

17 **THE COURT:** I'll stop you right there because I agree with  
18 you about that. The idea that the Hagens Berman law firm would  
19 have to disclose the full details of its IT security steps to a  
20 litigation opponent, I do think that introduces real risk. And  
21 so I think Apple needs to take that into account.

22 Requiring document vendors to do something I think is quite  
23 different from requiring the law firm representing their  
24 opponents to disclose things. Of course, plaintiff's counsel  
25 should have adequate security measures, but I do get concerned

1 about -- because the Hagens Berman law firm represents many  
2 different parties and many different cases.

3 And having them, forcing them to turn over all the  
4 information about how their firm's systems are protected, I get a  
5 little queasy at the thought of it. That makes me nervous.

6 So all right. But, Mr. Lopez, continue. I didn't mean to  
7 interrupt.

8 **MR. LOPEZ:** Yeah. Thank you, Your Honor.

9 **THE COURT:** I did mean to interrupt you to say I agree with  
10 you, but please continue.

11 **MR. LOPEZ:** Thank you, Your Honor.

12 The other thing is the Court just referenced this plan that  
13 Apple's proposal references. And I'd just point out that in  
14 everything it submitted to the Court, I don't believe there's an  
15 instance where it requires a law firm to put that sort of  
16 detailed plan into a certain publication or into a certain  
17 writing that then could be available to the other side.

18 Again, these other things that Apple cites to which are  
19 agreed provisions or something from the Sedona conference, which  
20 by the way this really angular publication it cites to was  
21 published in 2017 well before it entered into the Cameron  
22 consumer protective order that was worked out and it's been  
23 serving everybody well. It doesn't require that of law firms.

24 So, again, what I think beyond what's happened here if Apple  
25 gets the Court to rule on this proposal and all of a sudden now

1 has an order that it can use and cite to it in other cases, I  
2 just think it's going to lead to this proliferation of ill-  
3 considered decisions because there hasn't been enough input from  
4 experts from various players in it.

5 The last thing I'll say, Your Honor, about the Court's plan,  
6 which I understand where the Court is coming from on that, is we  
7 haven't discussed timing here. And the situation here is that  
8 Apple has indicated that it's going to allow us access to this  
9 new material. Meanwhile, the clock is ticking. Apple has moved  
10 to dismiss once. We told the Court that we were going to amend  
11 in lieu of responding, so we did that on December 2nd.

12 The parties didn't have access to the transcript from the  
13 case management conference when they filed their letter brief  
14 here. That didn't become available until January 3rd. But we  
15 have it; the parties do now. And on the last page, the Court  
16 indicates that the Court wanted us to have access to the material  
17 form in the complaint and also for our opposition to Apple's  
18 forthcoming motion to dismiss the amended complaint.

19 So we didn't have access to material when we filed our  
20 amended complaint on December 2nd. And I fear that the longer we  
21 draw this out when we have a perfectly good protective order  
22 already in place, it means we're going to be prejudiced more  
23 because we're not going to have that material which Apple says  
24 already in its view is responsive in part with some of the  
25 arguments it's made in its motion to dismiss.

1           And, again, Judge Gonzalez Rogers wanted us to have access  
2 to that material so we could do that. And I would just refer the  
3 Court to the transcript of the CMC, the last two or three pages  
4 (indiscernible).

5           **THE COURT:** This is all leading up to a question from me to  
6 you which is when do you need to have all this protective order  
7 stuff resolved so I've entered a final protective order so that  
8 you get the material?

9           **MR. LOPEZ:** As soon as possible. Again, the material is --

10           **THE COURT:** No, but I need a date.

11           **MR. LOPEZ:** Yesterday, Your Honor. I mean, seriously, the  
12 Court --

13           **THE COURT:** Well, that's not very helpful.

14           **MR. LOPEZ:** Well, I don't mean it -- I mean it to be helpful  
15 because the Court itself referenced the amended complaint which  
16 the deadline passed. And then our response to Apple's motion to  
17 dismiss, Apple will file that on the 20th, I believe, of this  
18 month, next Friday. Then our opposition is due February 10th.

19           **THE COURT:** So Apple's going to file it on --

20           **MR. LOPEZ:** On January 20th.

21           **THE COURT:** January 20th. And then -- well, since you've  
22 already filed the amended complaint without access to the  
23 materials, that can't really be undone. But it seems to me that,  
24 okay, the answer to my question is January 20th because the  
25 moment Apple gets that motion on file, you need to be able to

1 review the material to oppose.

2 So my order probably isn't going to go out until Tuesday.

3 But I think the parties should start meeting and conferring about  
4 data security stuff immediately and then file a further joint  
5 discovery letter brief, I'll put this in my order, by January  
6 19th with competing protective orders. And then, let's -- let me  
7 look at my calendar for January 20th.

8 I'll schedule a further hearing for January 20th at 3 p.m.,  
9 and I'll get an order out that day. And that way plaintiffs can  
10 have access to the materials in order to oppose Apple's motion.

11 Any further comments, Mr. Lopez?

12 **MR. LOPEZ:** No. I mean I think I understand what the Court  
13 is saying. I mean I hope we get a commitment from Apple that  
14 once the order issues, we're going to immediately have access to  
15 that material that's been there because I know with respect to  
16 the data portion, it had said it would do that seven days after  
17 entry of the protective order.

18 So there shouldn't be that issue here with regard to  
19 documents because they're already in the database that it's  
20 simply a matter of saying, all right, you have our permission to  
21 go look at that material.

22 **THE COURT:** That's my understanding is that for at least the  
23 initial documents nothing is actually going to move because it's  
24 already in the database. Plaintiff's counsel would just look at  
25 it.

1           But let me ask Apple, once I enter the protective order,  
2 will you then immediately say, yes, you can look at it for the  
3 purpose of this case?

4           **MR. LAZARUS:** Thank you, Your Honor.

5           We are prepared to say that except for certain third-party  
6 confidentiality issues. We have raised this in meet and confers  
7 with the plaintiffs. It may be necessary for the vendor to allow  
8 access to plaintiffs to all the documents other than a very few  
9 that have some third-party confidentiality issues.

10           **THE COURT:** Does that raise an issue for you, Mr. Lopez?

11           **MR. LOPEZ:** No. As Mr. Lazarus has indicated, the parties  
12 have talked about that issue, and we understand Apple's position.  
13 And I think we'll need to work with Apple further to access those  
14 materials.

15           **THE COURT:** But, Mr. Lazarus, if I understand you correctly,  
16 once I enter the protective order, then leaving aside third-party  
17 confidentiality issues, Apple would then be prepared to  
18 immediately tell plaintiffs in this case that they could have  
19 access to Apple's materials. Is that correct?

20           **MR. LAZARUS:** Yes, Your Honor.

21           We would -- I think we would want to discuss with plaintiffs  
22 and enter into a stipulation to that effect. But, yes, we are  
23 willing to and able to give plaintiffs access to the documents.  
24 As Mr. Lopez says, they are held by a vendor that is working with  
25 the consumer plaintiffs in the Pepper case. So, yes, I do think

1 that that is workable.

2 **THE COURT:** Okay. Then I'll --

3 **MR. LAZARUS:** (Indiscernible).

4 **THE COURT:** Go ahead.

5 **MR. LAZARUS:** I'm sorry. If I may respond to just a few  
6 points that Mr. Lopez made.

7 **THE COURT:** Sure.

8 **MR. LAZARUS:** So one thing that Mr. Lopez mentioned and Your  
9 Honor mentioned, it is critical that there be security wherever  
10 sensitive information goes. And so when sensitive information is  
11 held by a law firm and also a vendor, if one of them has a  
12 security protocol in place that is effective and the other one  
13 doesn't, then that one becomes the weak link and is the target  
14 for attackers.

15 So we do think that it is imperative that the law firms have  
16 adequate security programs. At the same time, as Your Honor has  
17 raised, you know, what does the word "transit" mean and what  
18 exactly is required, we do not intend to make this an overly  
19 burdensome, overly onerous system. And so we are happy to meet  
20 and confer with plaintiffs to make sure that it is not that.

21 And incidentally, in our meet and confers, we would be happy  
22 to involve an ESI expert who can be a neutral expert on these  
23 matters. As Mr. Lopez said, it's important to have stakeholders  
24 across the board give input on this. So we think that that would  
25 be useful.

1       I would say that, you know, the assertion that we have a  
2 perfectly good protective order in the related cases is not  
3 logically -- doesn't hold water. That it's akin to saying the  
4 fact that we weren't robbed last night means we should leave the  
5 door unlocked tonight.

6       These data breaches are happening. I don't know if Your  
7 Honor has seen in the legal press that just five days after we  
8 entered our joint discovery letter here, the discovery vendor,  
9 Ricoh, that's R-I-C-O-H, was hit with a data breach. This is  
10 happening right now, and the protective order should be adequate  
11 to address it.

12       So I will leave it there for now in the open session.

13       **MR. LOPEZ:** One quick response, Your Honor, if I could?

14       **THE COURT:** Yes.

15       **MR. LOPEZ:** So this -- what Mr. Lazarus has said is really  
16 conflating the underlying data security issue with the form of  
17 this protective order, which again the latter of which is  
18 something that's been used over and over again as the basis for  
19 very good workable protective orders in the high-tech district  
20 and all of the United States.

21       And the second thing I'd say is, as Mr. Lazarus knows, we've  
22 already provided assurances to Apple during our meet and confers  
23 with regard to our firm security and with regard to vendor  
24 security. So there shouldn't be any sort of doubt on the record  
25 that security isn't something, you know, again, that we take very

1 seriously because we do. And so does the vendor we've chosen.

2 And, again, Apple isn't alleging anything to the contrary.

3 It's not pointing to any sort of data breach with respect to the  
4 vendor in use currently nor with regard to our firm. So I just  
5 want to make that very clear for the record.

6 **THE COURT:** All right. Thank you. I appreciate your  
7 comments.

8 In case it wasn't clear, I've decided against having a  
9 closed session today because Mr. Lazarus indicated that the  
10 things he would like to discuss in the closed session he has not  
11 discussed with you, Mr. Lopez. And I want Apple to discuss those  
12 with plaintiff's counsel before presenting them to me because  
13 that's the only way to have a meaningful meet and confer.

14 **MR. LAZARUS:** Your Honor, I understand that. The  
15 difficulty, though, and part of the reason that we have not  
16 disclosed that information is that we don't have a protective  
17 order here. And we would feel comfortable disclosing this  
18 information in a sealed court session.

19 I suppose if we're going to be disclosing it outside of  
20 court to the plaintiffs, I don't know if it would make sense for  
21 the Court to order the plaintiffs not to disclose that otherwise  
22 or to keep it confidential if that would make sense.

23 **THE COURT:** No, I'm not going to do that. If there's  
24 something that you can't even tell to the plaintiff's counsel,  
25 then I'm beginning to wonder how relevant it is. There needs to

1 be something -- what I would expect that would be relevant which  
2 for you to flag some security issues that you thought arose in  
3 the related cases, not things unrelated to these cases.

4 So, anyway, but I -- and then there's no reason why you  
5 can't get on a phone call with the other side and say, hey, can  
6 we agree that this information is going to stay confidential.  
7 You can do that if there's something appropriate you want to  
8 raise with them.

9 Anyway, we've gone on long enough. So I am going to issue  
10 an order likely on Tuesday. I'm going to rule on the use  
11 restriction. I'm going to rule on the disclosure of information  
12 regarding data breaches. I'm going to rule on the non-waiver as  
13 to manually review the material. I'm going to rule on the  
14 destruction of materials.

15 And then I'm going to direct the parties to meet and confer  
16 about data security provisions. The principal reason for doing  
17 this is that as soon as I started asking Apple some specific  
18 questions about what exactly its proposal meant, Apple didn't  
19 have very good answers and in some cases just said it wasn't  
20 quite sure.

21 So I don't really know what Apple's proposing, and I'm not  
22 sure Apple knows it either. And that also means that plaintiffs  
23 hadn't had the opportunity to consider it. And I would like this  
24 dispute to be considered before it comes to me.

25 This meet and confer is going to have to happen quickly,

1 though, because plaintiffs raise a very good point about how  
2 they're going to need to have access to Apple's information  
3 pretty soon. So, again, the order that comes out on Tuesday is  
4 going to require a joint discovery letter brief following meet  
5 and confer on January 19th with competing protective orders.

6 So please get cracking on your meet and confer because you  
7 only have a few days to do it. And then we'll come back on  
8 January 20th at 3 p.m. for our follow up hearing.

9 Anything further, Mr. Lopez, that we need to address at  
10 today's hearing?

11 **MR. LOPEZ:** The Court just indicated now that it intends to  
12 rule on the manual review on Rule 502-type issue. Does the Court  
13 want to hear anything further on that before?

14 **THE COURT:** I don't. I thought everything else was very  
15 straightforward in the letter brief, so thank you to the parties  
16 for briefing that.

17 Anything further, Mr. Lazarus, that you feel the need to  
18 address?

19 **MR. LAZARUS:** No. Thank you, Your Honor.

20 **THE COURT:** All right. Thank you, counsel. The matter is  
21 taken under submission. Have a good weekend.

22 **MR. LOPEZ:** Thank you, Your Honor. You too

23 **THE CLERK:** Thank you everyone. We're off the record in  
24 this matter.

25 (Proceedings adjourned at 3:46 p.m.)

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3                    **C E R T I F I C A T E**

4                    I, DIPTI PATEL, court-approved transcriber, certify that the

5 foregoing is a correct transcript from the official electronic

6 sound recording of the proceedings in the above-entitled matter.

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10                   DIPTI PATEL, CET-997

11                   LIBERTY TRANSCRIPTS

12                   Date: January 18, 2023

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